

ISSUE DATE: July 21, 1995

DOCKET NO. P-1621, 1657/PA-94-1004

ORDER APPROVING SETTLEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Joel Jacobs  
Marshall Johnson  
Dee Knack

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Department of Public Service's Recommendation that the Minnesota Public Utilities Commission Issue an Order to Peoples Telephone Company, Inc. and Telecoin Communications, Ltd. Revoking Both Companies' Certificates of Authority to Operate in Minnesota

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**PROCEDURAL HISTORY**

On October 28, 1994, Peoples Telephone Company, Inc. (Peoples) notified the Commission that, as of October 21, 1994, it had acquired Telecoin Communications, Ltd. (Telecoin). Both Peoples and Telecoin have certificates of authority to provide telephone service in Minnesota. Telecoin is authorized to provide standard pay telephone service and Peoples has authority to provide "store and forward" service as well as standard pay telephone service.

On November 9, 1994, the Minnesota Department of Public Service (the Department) filed comments in this matter. Based on its investigation and description of the companies' violations of law, the Department recommended that the Commission revoke the certificates of authority to operate in Minnesota for both Peoples and Telecoin. The matter was assigned to Docket No. P-1621, 1657/PA-94-1141.

On November 21, 1994, the Commission issued a notice requesting comments on the Department's recommendations.

On December 9, 1994, Telecoin and Peoples Acquisition Corporation (PAC), a wholly owned subsidiary of Peoples, filed a response alleging, contrary to what Peoples had stated in its October 25, 1994 letter, Telecoin had in fact been acquired by PAC. The response stated that PAC and Telecoin would submit their merger to the Commission for review.

On December 12, 1994, Telecoin and PAC filed a petition for Commission approval of the transfer of assets from Telecoin to PAC pursuant to Minn. Stat. § 237.23 (1994). The petition was assigned to Docket No. P-1621, 1657/PA-94-1141.

On April 18, 1995, Peoples, PAC, and Telecoin (the Companies) withdrew the December 12 petition.<sup>1</sup>

On April 19, 1995, Peoples and Telecoin submitted a petition requesting that the Commission approve the merger of Telecoin into Peoples and the subsequent cancellation of Telecoin's certificate of authority.

On April 25, 1995, the Department and the Companies filed a stipulation as a proposed settlement of all issues in the merger investigation docket, Docket No. P-1621, 1657/PA-94-1004.

On June 20, 1995, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **A. Introduction**

The Stipulation submitted by parties is in the nature of a proposed settlement of a disputed matter. Accordingly, it will be analyzed pursuant to Minn. Stat. § 237.076 (1994). Pursuant to Subdivision 2 of the statute, the Commission may accept a proposed settlement upon finding that to do so is in the public interest and is supported by substantial evidence.

### **B. Terms of the Proposed Settlement**

The stipulated settlement proposes to resolve all issues in Docket No. P-1621, 1657/PA-94-1004. The Stipulation filed by the parties contains all the terms of the settlement and is attached to this Order. The key provisions are as follows:

- Peoples agreed to pay to the State of Minnesota \$14,700 as a penalty pursuant to the provisions of Minn. Stat. § 237.461 (1994).
- The Department agreed to recommend that the Commission not issue a Show Cause Order against Peoples and Telecoin and that it approve the merger of the companies and the cancellation of Telecoin's certificate of authority.
- Peoples agreed that it and its subsidiaries or affiliates will engage local counsel before conducting future business transactions

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<sup>1</sup> In a separate Order issued contemporaneously with this Order, the Commission has approved the withdrawal of that filing. See ORDER ALLOWING WITHDRAWAL OF FILING AND CLOSING DOCKET, Docket No. P-1621, 1657/PA-94-1141.

concerning the acquisition of telephone company property in Minnesota and before conducting all other regulatory matters in Minnesota.

- Peoples committed to abide by the provisions of Minnesota statutes, rules, and Commission Orders now and in the future.

### C. Commission Analysis

In evaluating the appropriateness of the proposed settlement, the Commission has two basic concerns: 1) that the remedial actions required of the companies be reasonable in light of the activity alleged in this matter and 2) that the remedial actions provide reasonable assurance of compliance with applicable regulatory requirements in the future.

#### 1. Remedial Actions Reasonably Related to Nature of Non-Compliance

In this case, the major consequence is the requirement that Peoples is required pay to the State of Minnesota a penalty in the amount of \$14,700. This amount appears justified based on the following considerations:

The Department has made a strong showing for its allegation that Peoples and Telecoin have demonstrated through their actions a willful disregard for compliance with Minnesota telecommunications statutes and rules.

**Peoples:** Peoples acquired Kantel Communications, Inc. (Kantel) in February 1993 without prior approval of the Commission in violation of Minn. Stat. § 237.23. Later, despite having actual notice from the Commission that sale or transfer of assets of a telephone company required prior Commission approval, Peoples *again* ignored the requirements of the statute by acquiring the assets of Telecoin without obtaining Commission approval.<sup>2</sup> In addition, following its acquisition of Kantel, Peoples operated Kantel's store and forward operations without a certificate of authority to do so.

**Telecoin:** In its examination of Telecoin's Annual Reports, the Department found that Telecoin has been providing alternate operator services without proper authority. Telecoin has never received such authority from the Commission, nor has it applied for such authority. In Docket No. P-666/CT-93-1074, the Department recommended that the Commission revoke Telecoin's certificate of authority. In its January 6, 1994 Order, the Commission did not revoke Telecoin's authority but warned it that it must maintain compliance with regulations.

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<sup>2</sup> See the Commission's Order in Docket No. P-1621, 1466/PA-93-1184 (February 25, 1994). Note that the actual formal notice by the Commission to Peoples regarding this requirement is not a pre-requisite to responsibility for non-compliance with it. The fact that Peoples had formal actual knowledge of the statutory requirement before the second violation is only mentioned to indicate the additional gravity of Peoples' second violation. The Commission has consistently found that actual notice regarding a regulatory requirement is not necessary before a company is required to abide by it.

Despite this warning, Telecoin did not maintain compliance. In addition to continuing to provide alternative operator service without authority, it transferred its assets to Peoples on October 21, 1994 without first obtaining Commission approval, in violation of Minn. Stat § 237.23 (1994).

In light of its history of noncompliance as well as the fact that Telecoin has transferred all its assets to Peoples and no longer exists as an operating telephone company, it is appropriate, as the Settlement proposes, that Commission revoke Telecoin's certificate of authority.<sup>3</sup> It is also reasonable in these circumstances that Peoples, as the surviving company, pay the entire penalty amount.

## **2. Assurance of future compliance with applicable regulatory requirements**

In the Stipulation, Peoples pledges that it will now and forever abide by and refrain from violating the provisions of Chapter 237 of Minnesota Statutes, the rules promulgated thereunder, and Commission Orders. Given the Company's record to-date, this statement alone would be insufficient to provide the desired assurance of future compliance. However, there are other factors at play at this time which support such confidence.

First, Peoples has agreed to pay a significant amount to make amends. The amount is adequate in size to assure that the Company's attention has been directed to the seriousness of regulatory compliance.

Second, the Company (including its subsidiaries and affiliates) has agreed to engage local legal counsel before conducting any future business transactions concerning the acquisition of the property of a telephone company in Minnesota and before conducting all other regulatory matters in Minnesota. The Commission understands this to mean that competent local legal counsel will be engaged on a regular basis to advise the Company of the particular and on-going regulatory requirements applicable to all of its operations in Minnesota.

Third, the parties have made it plain in the Stipulation and Peoples understands completely that its violation of any part of the Stipulation (including, for example, any failure to abide by the pledge to maintain compliance with Minnesota's regulatory requirements) will reopen this matter for further legal proceedings, including loss of Peoples' certificate of authority. Another consequence of reopening this matter, of course, would be the likely referral of this matter to the Attorney General for penalty proceedings pursuant to Minn. Stat. § 237.461 (1994), proceedings which may result in liability greater than the amount paid pursuant to this Stipulation.

In these circumstances, the Commission finds reasonable assurance that Peoples will maintain

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<sup>3</sup> See ORDER REVOKING AUTHORITY AND CLOSING DOCKET, a separate Order in Docket No. P-1657/CT-92-881 issued contemporaneously with this Order, revoking Telecoin's certificate of authority.

compliance in the future.

**D. Commission Action**

In light of its analysis of this matter, the Commission finds that the proposed settlement (as presented in the Stipulation) is in the public interest and is supported by substantial evidence in the record. Accordingly, the Commission will approve the settlement in accordance with the terms set out in the Stipulation, as specified in the Ordering Paragraphs.

**ORDER**

1. The settlement proposed by Peoples Telephone Company, Inc. (Peoples), Telecoin Communications, Ltd. (Telecoin), Peoples Acquisition Company (PAC), and the Minnesota Department of Public Service (the Department) to resolve this matter is approved. A copy of the Stipulation filed by the parties, which states the terms of the settlement, is attached.
2. Within seven (7) days of this Order and pursuant to the Settlement, Peoples shall pay to the State of Minnesota fourteen thousand seven hundred dollars (\$14,700) in lieu of participating in penalty proceedings pursuant to Minn. Stat. § 237.461
3. The transfer of assets from Telecoin to peoples is hereby approved.
4. Telecoin's certificate of authority to provide regular pay telephone service is revoked in a separate Order in Docket No. P-1657/CT-92-881, issued contemporaneously with this Order.
5. The parties shall proceed to carry out their responsibilities under the Stipulation in every respect.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)